

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Review Policies
Concerning Intrastate Carrier Access Charges.

Rulemaking 03-08-018
(Filed August 21, 2003)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

1. Summary

Following a prehearing conference (PHC) in this proceeding on November 19, 2003, this ruling and scoping memo describes the issues to be considered in this proceeding and the timetable for their resolution. As required by Rules 6(c)(2) and 6.3 of the Commission's Rules of Practice and Procedure (Rules), this ruling affirms the proceeding category and the need for evidentiary hearings, designates a principal hearing officer.

2. Phase 1 Issues and Schedule for Phase 1 Order

The Commission opened this rulemaking to address whether existing local exchange carrier (LEC) access charges are set at appropriate levels, considering their costs and the impact of access charge levels on long distance competition, and related issues. Rulemaking (R.) 03-08-018, which initiated this rulemaking and inquiry stated the Commission's intent to address the issues in two phases. In Phase 1, the Commission stated its intent to address the following threshold issues needing resolution before pursuing Phase 2 issues:

1. If the Commission reduced or eliminated the interconnection charge (NIC) and transport interconnection (TIC) portion of access charges, should it offset decreases in LEC access charge revenues with increases in other rates?

2. If the Commission were to change the NIC and TIC portion of access charges, what is the possible range of revenue that would be affected?
3. Should the Commission consider revising the access charges for mid-size and small LECs? If so, should the Commission do so in this docket or should it open a separate proceeding on this issue? If in this docket, at what point in this docket?
4. Should the Commission consider regulating access charges for CLECs? If so, should the Commission do so in this docket or should it open a separate proceeding on this issue? If in this docket, at what point in this docket?
5. In lieu of the Commission establishing access network costs for individual mid-size LECs, small LECs, and CLECs, should the Commission consider utilizing SBC's and Verizon's access rates as a proxy to establish ceiling rates applicable to the mid-size LECs, small LECs and CLECs.

The parties to this proceeding filed opening comments on these Phase 1 issues on October 24, 2003 and filed reply comments November 12, 2003. The Commission held a PHC on November 20, 2003. At the PHC, the parties addressed whether the Commission had sufficient information following the filing of comments to issue an order resolving Phase 1 questions. The assigned administrative law judge (ALJ) stated the order she would propose would not resolve contested issues of fact, such as the relationship between existing access charges and their costs. Such matters would be the subject of Phase 2 and evidentiary hearings, if necessary, following issuance of a Phase 1 order. With that understanding, no party asked for hearings in Phase 1 of this proceeding.

Several parties asked for permission to file a response to the declaration of Dr. Lee Selwyn, appended to the reply comments of AT&T Communications of California, Inc. The ALJ granted the request, permitting responses on or before December 2, 2003.

This ruling confirms the questions to be addressed in a Phase 1 order are those identified for Phase 1 in R.03-8-018 and repeated above. The Commission intends to issue an order on Phase 1 issues in this proceeding in the near future. After the issuance of that order, the Commission will conduct a second PHC to address remaining issues and the schedule for their resolution.

3. Procedural Schedule¹

Responses to Dr. Selwyn declaration	December 2, 2003
Draft Order in Phase 1 Issued by ALJ	January, 2004
Final Commission order expected	March 2004
PHC in Phase 2	April 7, 2004 in San Francisco @ 11:00 a.m.

This ruling affirms the Commission's intent to resolve all matters in this proceeding within 18 months of the date of this scoping memo, consistent with Pub. Util. Code § 1701.5.

¹ Locations and times of these meetings will appear on the Commission Daily Calendar.

4. Category of Proceeding

R.03-08-018 preliminarily determined that this is a ratesetting proceeding. The Commission invited objections to its initial categorization. No party has expressed any objection. This ruling confirms that the proceeding is ratesetting.

5. Need for Evidentiary Hearings

R.03-08-018 anticipated that hearings would be needed in this proceeding. The ALJ has correctly determined that evidentiary hearings are not required for the Commission's resolution of Phase 1 issues and that evidentiary hearings are likely to be needed in order to resolve certain Phase 2 issues involving service costs. This ruling affirms the preliminary determination that hearings are required in this rulemaking.

6. Principal Hearing Officer

This ruling designates ALJ Kim Malcolm as the principal hearing officer in this proceeding.

7. Service List and Electronic Service Protocols

The service list for this proceeding is located at the Commission's website (www.cpuc.ca.gov). Those who are not already parties, but who wish to participate in this proceeding as full parties may make a written motion to intervene or submit an appearance form at a hearing. Those who wish to be included as parties on the service list may alternatively send their requests in an e-mail note to ALJ Malcolm (kim@cpuc.ca.gov).

To reduce the burden of service in this proceeding, the Commission will use electronic service, to the extent possible using the electronic service protocols provided in this ruling.

All individuals on the service list should provide electronic mail addresses. The Commission and other parties will assume a party consents to electronic service unless the party indicates otherwise.

Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure.

Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission's Rules of Practice and Procedure.

Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

- Merge into a single electronic file the entire document to be served (e.g., title page, table of contents, text, attachments, service list).
- Attach the document file to an electronic note.
- In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.
- Within the body of the note, identify the word processing program used to create the document if anything other than Microsoft Word. (Commission experience is that most recipients can readily open documents sent in Microsoft Word 6.0/95.)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (regular U.S. mail shall be the default, unless another means—such as overnight delivery—is mutually agreed upon).

Parties should exercise good judgment regarding electronic mail service, and moderate the burden of paper management for recipients. For example, if a particularly complex matrix or cost-effectiveness study with complex tables is an attachment within a document mailed electronically, and it can be reasonably foreseen that most parties will have difficulty printing the matrix or tables, the sender should also serve paper copies by U.S. mail, and indicate that in the electronic note.

Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of electronic mail addresses:

- On the "Legal Documents" bar choose "Service Lists."
- Scroll through the "Index of Service Lists" to the number for this proceeding (or click "edit," "find," type in proceeding number, and click "find next").
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Parties should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur, although PDF files can be especially difficult to print out.) For the purposes of reference and/or citation (e.g., at the Final Oral Argument, if held), parties should use the pagination found in the original document.

8. Rules Governing Ex Parte Communications

This proceeding is subject to Pub. Util. Code§ 1701.3(c), which means that ex parte communications are prohibited unless certain statutory requirements are met (see also, Rule 7(c)). An ex parte communication is defined as “any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util. Code § 1701.1(c))(4).) Commission rules further define the terms “decisionmaker” and “interested person” and only off-the-record communications between these two entities are “ex parte communications.”²

The law permits Commissioners to engage in ex parte communications if all interested parties are invited and with no less than three business days’ notice. If a Commissioner agrees to meet with an individual party, the Commissioner must grant all other parties individual ex parte meetings of a

² See Rules 5(e), 5(f) and 5(h).

substantially equal period of time. The law permits written ex parte communications provided that those who provide the communication to a decision maker must provide a copy the communication to each party on the same day. (Pub. Util. Code § 1701.3(c).) Parties must report ex parte communications as specified in Rule 7.1.

IT IS RULED that:

1. The scope of Phase 1 of this proceeding is set forth in this ruling.
2. The schedule of this proceeding, including its projected submission date, is set forth in this ruling. The assigned administrative law Judge (ALJ) may specify the schedule for Phase 2 of this proceeding after issuance of a Commission order in Phase 1. The ALJ may make any revisions to this schedule necessary for the efficient management of the proceeding.
3. This proceeding is categorized as ratesetting and evidentiary hearings may be necessary, consistent with R.03-08-018. This ruling on category may be appealed, as provided in Rule 6.4.
4. ALJ Kim Malcolm is the principal hearing officer in this proceeding.
5. This ratesetting proceeding is subject to Pub. Util. Code § 1701.3(c), meaning that ex parte communications are prohibited unless certain statutory requirements are met. Such communications are also governed by Rule 7(c), and must be reported, as provided in Rule 7.1.

Dated December 4, 2003, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail and by electronic mail this day served a true copy of the original attached Assigned Commissioner Ruling and Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated December 4, 2003, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

